



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

June 2, 2009

Colonel Dionysios Anninos  
District Commander  
U.S. Army Corps of Engineers, Norfolk District  
803 Front Street  
Norfolk, Virginia 23510

Re: PCN NAO-2006-7163, Clintwood Elkhorn Mining Company, Laurel Branch Surface Mine, NWP 21, Buchanan County, Virginia

Dear Colonel Anninos:

The U.S. Environmental Protection Agency (EPA) has reviewed the preconstruction notification for Clintwood Elkhorn Mining Company's proposed project modification involving discharges of fill material into approximately 5,350 additional linear feet of waters of the United States in conjunction with the construction, operation, and reclamation of the proposed surface mine. EPA is requesting that the Norfolk District use its discretionary authority provided by 33 C.F.R. 330.1(d) & 330.5(d) to review the project through the Individual Permit process. EPA is concerned that this project's proposed impacts may have more than a minimal individual or cumulative adverse effect on the environment and, therefore need further review under the Clean Water Act Section 404(b)(1) Guidelines. EPA believes that further avoidance and minimization efforts are needed, that the proposal may cause or contribute to an impairment of the aquatic life use downstream of the fills, and that the direct and cumulative impacts may be persistent and permanent and may not be sufficiently or effectively compensated through the proposed mitigation.

The Laurel Branch Surface Mine project area is located 1.8 miles west, southwest of the community of Hurley, Buchanan County, Virginia. The proposed project will add an additional 283 acres to an existing permitted mine. The aquatic resource impacts are associated with one hollow fill, construction of one sediment pond, and associated reclamation activities. The proposed aquatic resource impacts are to the entirety of Spring Branch and two of its tributaries. Spring Branch is a tributary to Race Fork, which is which is a tributary to Knox Creek, which flows to the Tug Fork of the Big Sandy River. The proposed permit modification will impact an additional 3,900 linear feet of intermittent stream and 1,450 linear feet of ephemeral stream. Previously permitted aquatic resource impacts on the 981 acre site were for 15,980 linear feet of which 4,140 linear feet were perennial and 11,840 linear feet were intermittent. The cumulative impacts for the Laurel Branch Surface Mine, including the proposed modification, will bring the aquatic resource impacts totals to 21,330 linear feet on 1,199 acres.

Knox Creek, down stream of the mine site, has been identified as impaired for aquatic life use. EPA approved a Total Maximum Daily Load (TMDL) for total dissolved solids (TDS) in 2007.



In light of the existing impairment of this downstream system it is important to protect the headwater streams in the project area so as to continue to offer clean, freshwater dilution to downstream receiving waters to enhance the overall health and vitality of the larger watershed. EPA believes that the proposed mining activities would increase the currently documented TDS impairments.

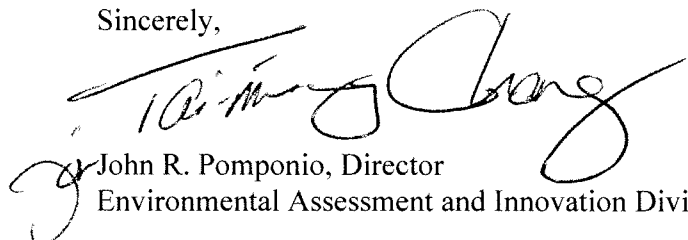
Section 404(e) of the CWA states that a general permit may be issued where the proposed activity will cause only minimal adverse environmental, impacts either individually or cumulatively. The general permit issuance must be based on the section 404(b)(1) Guidelines (Guidelines). The Guidelines, in part, require an analysis to determine if significant degradation of the aquatic ecosystem will occur, with special emphasis on the persistence and permanence of effects, both individually and cumulatively. The Race Fork watershed is comprised of 4,675 acres, of which 1,811 acres (39%) are currently permitted by the Virginia Department of Mined Land Reclamation (VDMLR). EPA is concerned that this proposed project along with past and reasonably anticipated future mining projects in the watershed may have a cumulative adverse impact on the watershed.

EPA is also concerned that the impacts to these systems may not be sufficiently compensated by the proposed mitigation. Offsite mitigation is proposed on Elk Garden Creek in Russell County on a stream described as being impacted by cattle grazing which has accelerated bank erosion and relocated reaches. The proposed mitigation site is 32.5 air miles away from the proposed impacts, in a different watershed. EPA wishes to ensure that the mitigation proffered replaces the lost functions and services of the impacted streams. To ensure replacement of the lost functions and services of the impacted streams any mitigation proposal should strive to match the lost flow regime (frequency, duration and seasonality of flow annually), provide the same structural habitat (riffle pool, shading, etc), meet the same water chemistry characteristics (hardness, pH, conductance), and also support the same biologic communities (macroinvertebrates, fish, etc). The appropriate mitigation plan should also include performance standards to determine if a compensatory mitigation project meets its objectives.

In light of the significant direct impacts to headwater perennial stream channels, possible downstream water quality impacts, the potential for cumulative adverse effects, and mitigation concerns, EPA recommends that the District use its discretionary authority to thoroughly review the proposal through the individual permit process.

Thank you for the opportunity to provide comments regarding this proposal. Should you have any questions please feel free to contact Mr. Mark Douglas at 215-814-2767 or by email at [douglas.mark@epa.gov](mailto:douglas.mark@epa.gov).

Sincerely,



John R. Pomponio, Director  
Environmental Assessment and Innovation Division